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May 6, 2016

Gaston County Clerk of Superior Court
325 Dr. Martin Luther King Jr. Way
Suite 1004
Gastonia, NC 28052-2331

***Re:*** ***Dan Deitz and Ellen Deitz Tucker v. City of Belmont, Adrian Miller in his Official Capacity as City Manager of the City of Belmont***
***Docket No.: 15 CVS 3203***
***CLF File No.: 0016***

Dear Clerk of Court:

Please find enclosed an original memorandum and one copy of the caption page of Plaintiffs' Memorandum of Law Supporting Plaintiff's Motion for Summary Judgment in the above-captioned matter. Please file the original in the court file and return a file-stamped, executed copy of the caption page to our office in the enclosed self-addressed, prepaid envelope.

Please call me with any questions or concerns. Thank you for your assistance in this matter.

Regards,

Elliot Engstrom
Lead Counsel
Center for Law and Freedom
Civitas Institute
N.C. Bar No. 46003

Cc: Brad Kline, Esq. (via U.S. Mail and Electronic Mail)
Christian Ayers, Esq. (via Electronic Mail)

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| STATE OF NORTH CAROLINA | IN THE GENERAL COURT OF JUSTICE |
| | SUPERIOR COURT DIVISION |
| COUNTY OF GASTON | 15 CVS 3203 |

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| DAN DEITZ, ELLEN DEITZ TUCKER,<br><br>Plaintiffs,<br>v.<br><br>CITY OF BELMONT, ADRIAN MILLER in his official capacity as City Manager of the City of Belmont,<br><br>Defendants. | ) | MEMORANDUM OF LAW SUPPORTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT |

NOW COME the Plaintiffs, Dan Deitz and Ellen Deitz Tucker, by and through the undersigned counsel, and file this memorandum of law in support of their amended motion for summary judgment pursuant to Rule 54 of the North Carolina Rules of Civil Procedure. On August 28, 2015, Plaintiffs filed suit in this Court under the Uniform Declaratory Judgment Act and North Carolina's Public Records Act. N.C.G.S. § 1-253; N.C.G.S. § 132. In their complaint, Plaintiffs alleged that Defendants violated North Carolina's Public Records Act when Defendants denied Plaintiffs' July 8, 2015 public records request. Specifically, Plaintiffs seek access to an investigative report into the Belmont Police Department compiled by the U.S. ISS Agency.

The question to be resolved by this Court is relatively straightforward: is the ISS Report (1) a public record subject to disclosure under N.C.G.S. § 132 or (2) a confidential personnel file exempted from the Public Records Act under N.C.G.S. § 160A-168? Plaintiffs seek declarations from this Court that the ISS Report is not a confidential personnel record, but is instead either (A) a public record subject to disclosure in its entirety or (B) a record containing both public and

confidential elements—in which case the burden is on Defendants to produce the public elements. In pursuit of these declarations, Plaintiffs show the Court the following.

## PROCEDURAL HISTORY & STATEMENT OF FACTS

In 2014, Defendants conducted an investigation into the Belmont Police Department (hereinafter "BPD"). Instead of using the City of Belmont (hereinafter "Belmont" or "City")'s own human resources department to conduct this investigation, Defendants chose to use an outside, third-party firm — the U.S. ISS Agency, LLC (hereinafter "ISS"). Defendants made a decision not to use City employees to conduct the investigation of the BPD. Defs.' Resp. to Req. for Admis. 2.[1] Defendants made this decision despite the fact that they employ human resources staff. Defs.' Resp. to Req. for Admis. 3. At least one part of Defendants' rationale was that use of ISS would ensure an independent investigation. Defs.' Resp. to Req. for Admis. 4. As a result, ISS was paid for its investigation with funds other than those budgeted to pay the salaries of the City's human resources staff. Defs.' Resp. to Req. for Admis. 6.

Defendant City Manager[2] considered the agreement to be for "an investigation of misconduct and mismanagement allegations." *See* Email Correspondence Between Defendant City Manager and ISS, attached hereto as Exhibit B. ISS expressed a similar understanding as to the nature of the investigation. *See* ISS Preamble to Investigative Interview and ISS Proposal, attached hereto as Exhibits C and D.

On September 8, 2014, ISS sent a proposal to Defendants to "conduct an internal, unbiased investigation into allegations of misconduct and mismanagement within the Belmont Police Department." *See* Exhibit D. In its proposal, ISS stated as follows:

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[1] *See* Defendants' Responses to Plaintiffs' First Set of Requests for Admissions, attached hereto as Exhibit A.
[2] Pursuant to N.C. R. Civ. P. 25(f)(1), Adrian Miller has been substituted into the case as a defendant in his official capacity as City Manager of the City of Belmont.

> "This investigation is an internal personnel investigation, not a criminal inquiry. As such, information gathered will be protected and kept confidential. In addition to town or police policy regarding such investigations, the information collected is protected by N.C.G.S. 160A-168: *Privacy of Employee Personnel Records* and cannot be released except under the terms of this law." *See* Exhibit D.

However, the ISS Proposal further stated as follows:

> The investigation will consist of the following tasks: ...Prepare a written report to the Town Manager that documents all relevant facts and circumstances found by the investigation and addresses the issues that are critical to the Town and the police department. The report will summarize the investigative findings including any violations of Town or police policies and rules for consideration by the Town Manager...ISS investigators will be available as needed for consultation regarding any future actions based upon investigative results. *See* Exhibit D.

From October of 2014 to February of 2015, ISS conducted its investigation. The investigation ultimately cost over $90,000 and lasted several months. Defs.' Resp. to Req. for Admis. 7, 8. The resulting report (hereinafter the "ISS Report") spans over 150 pages in length. Defs.' Resp. to Req. for Admis. 8. On April 17, 2015, following the release of the ISS Report, Charlie Franklin was terminated as Chief of Police for the City of Belmont. *See* Charlie Franklin's Notice of Termination from the Belmont City Manager, attached hereto as Exhibit E.

On July 8, 2015, Plaintiffs submitted a public records request, by and through counsel, seeking a complete copy of the ISS Report. *See* Plaintiffs' Public Records Request, attached hereto as Exhibit F. Defendants responded on July 15 with a complete denial of Plaintiffs' request. *See* Defendants' Public Records Denial, attached hereto as Exhibit G. On August 3, 2015, Plaintiffs' counsel sent a letter to Defendants notifying them of Plaintiffs' intent to file suit pursuant to N.C.G.S.§ 132-9. *See* Plaintiffs' Demand Letter, attached hereto as Exhibit H.

On August 28, 2015, Plaintiffs filed suit in this Court under the Uniform Declaratory Judgment Act and North Carolina's Public Records Act. N.C.G.S. § 1-253; N.C.G.S. §§ 132. In their complaint, they alleged that Defendants violated North Carolina's public records laws when they denied Plaintiffs' July 8, 2015 public records request. From November to March of 2016, the parties complied with the public records mediation provisions of N.C.G.S. § 7A-38.3E. On March 14, 2016, Plaintiffs moved for summary judgment pursuant to N.C.G.S. § 1A-1, Rule 56.

## STANDING

Three elements must exist for a plaintiff to bring a public records lawsuit. These elements are (1) a request for public records (2) made for the purpose of inspection and examination and (3) access to or copies of the requested records is denied. State Employees Ass'n of N. Carolina, Inc. v. N. Carolina Dept. of State Treasurer, 364 N.C. 205, 2011 (2010). These three elements unquestionably exist here. *See* Exhibits F and G.

## STATEMENT OF LAW

At issue in this case is whether and to what extent the ISS Report is a public record pursuant to N.C.G.S. § 132 or a personnel record subject to N.C.G.S 160A-168. This is a pure question of law that depends on the proper understanding of: (1) the legal nature of Defendants as subdivision of the State of North Carolina; (2) the Public Records Act; and (3) statutes governing the privacy of government employee personnel records.

### I. LEGAL NATURE AND DUTIES OF DEFENDANTS

Cities exist at the pleasure of the State of North Carolina, and derive all of their powers from the State. N.C. Const. Art. VII § 1. They have no inherent powers, but instead have only those powers delegated to them by legislative enactment. *See, e.g.,* City of Asheville v. State,

192 N.C. App. 1, 20 (2008); In re Ordinance of Annexation No. 1977-4, 196 N.C. 1, 16-17 (1978); King v. Town of Chapel Hill, 367 N.C. 400, 404 (2014).

Cities are allowed by statute to "contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in." N.C.G.S. § 160A-20.1. Such grants of authority should be "broadly construed" unless "contrary to...public policy." N.C.G.S. § 160A-4. The General Statutes do not, however, grant cities the power to delegate away their rights, duties, and obligations under the Public Records Act. On the contrary, public policy strongly favors disclosure of public records absent a specific statute saying otherwise. N. Carolina Elec. Membership Corp. v. N. Carolina Dep't of Econ. & Cmty. Dev., 108 N.C. App. 711, 716 (1993).

## II. THE PUBLIC RECORDS ACT

North Carolina's Public Records Act defines as a "public record" any document or other medium, "regardless of form or characteristics," that is "made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions." N.C.G.S. § 132-1(a). Such records are "the property of the people" and should be obtainable "free or at minimal cost unless otherwise provided by law." N.C.G.S. § 132-1(b). Absent a clear statutory exemption or exception, documents falling within the definition of "public records" under this Act must be made available for public inspection. Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 462 (1999). This is because the purpose of the Act is to provide for "liberal access to public records." Jackson v. Charlotte Mecklenburg Hosp. Auth., 768 S.E.2d 23, 24 (N.C. Ct. App. 2014). "It is clear that the legislature intended to provide that, as a general rule, the public would have liberal access to

public records." News & Observer Publ'g Co. v. State ex rel. Starling, 312 N.C. 276, 281 (1984)(citations omitted).

The custodian of a given public record is "the public official in charge of an office having public records." N.C.G.S. § 132-2. A custodian does not have to be a natural person, but can instead be a state entity. *See, e.g.* Lexisnexis Risk Data Mgmt. Inc. v. N. Carolina Admin. Office of Courts, 754 S.E.2d 223, 228 (N.C. Ct. App. 2014), *rev'd on other grounds*, 368 N.C. 180 (2015). This custodian must "permit any record in [his or her] custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law." N.C.G.S. § 132-6(a).

A public records request cannot be denied on the grounds that confidential and nonconfidential information are comingled. N.C.G.S. § 132-6(c). If it is necessary to separate the confidential and nonconfidential information, the public agency must bear the cost of this separation. Id. If a person requests access to public records, and has that request denied, then the requestor "may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying." N.C.G.S. § 132-9(a). If the parties have complied with the mediation provisions of N.C.G.S. 7A-38.3E, then the court has jurisdiction to enter such an order. Id.

North Carolina has a strong public policy in favor of governmental transparency. The General Statutes plainly state that "it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law." N.C.G.S. § 132-1(a). The appellate courts have confirmed that there is a "strong policy in favor of disclosure" of public records. N. Carolina Elec. Membership

Corp. v. N. Carolina Dep't of Econ. & Cmty. Dev., 108 N.C. App. 711, 716 (1993). A state actor therefore has the "burden of compliance" with the Public Records Act. State Employees Ass'n of N. Carolina, Inc. v. N. Carolina Dep't of State Treasurer, 364 N.C. 205, 214 (2010).

## III. THE PERSONNEL STATUTE

### *A. The Municipal Statute*

N.C.G.S. § 160A-168 governs the privacy of municipal personnel records. It states that "notwithstanding the provisions of [the Public Records Act], personnel files of employees, former employees, or applicants for employment maintained by a city are subject to inspection and may be disclosed only as provided by this section." N.C.G.S. § 160A-168(a). The statute defines an employee's personnel record as "any information in any form gathered by the city with respect to that employee." Id. It then lists twelve items that are a matter of public record, including information such as an employee's name, age, position, title, and current salary. N.C.G.S. § 160A-168(b). With the exception of these twelve items, "any information in any form gathered by [a] city with respect to [an] employee" is not public record. N.C.G.S. § 160A-168(a). The proper interpretation of this statute, or any statute, is a question of law. Purcell v. Friday Staffing, 761 S.E.2d 694, 698 (N.C. Ct. App. 2014).

The municipal personnel statute has only been the subject of appellate litigation four times. None of these cases presented the issue of whether a document was a personnel record. At issue in those cases were attempts to examine documents that were admittedly personnel records subject to the provisions of the statute.

The municipal personnel statute was recently the subject of litigation in Guildford County that did not reach the appellate level. Roch Smith v. City of Greensboro, 08 CVS 5569 (Guildford Cty. Sup. Ct. 2008), final order attached hereto as Exhibit I. There, the City of

Greensboro hired a third-party firm to investigate its police department, and plaintiffs sought access to the resulting report. The trial judge held that the report contained both public records and personnel records, and that the city therefore had to provide access to the public portions, "either by extracting the public parts from the whole or by excising the confidential parts." Id. The judge then ordered defendant city to provide those plaintiffs with redacted portions of the report including the Executive Summary, Introduction, and items from the Appendices. Id.

### *B. Other Personnel Statutes*

In addition to a municipal personnel statute, North Carolina has county and state personnel statutes. Both contain provisions regarding privacy of employee records. All three statutes are substantially similar to one another, and the county and municipal statutes are nearly identical. The Court of Appeals has in fact treated statements of law regarding one personnel statute as a binding interpretation of another. News Reporter Co. v. Columbus Cty., 184 N.C. App. 512, 516 (2007)(citing the North Carolina Supreme Court's treatment of the *state* personnel statute, when the case at hand dealt with the *county* personnel statute). For this reason, any judicial treatment of the county and state statutes is both persuasive and, in the proper context, authoritative as to the municipal statute.

#### i. The County Statute

The county personnel statute is nearly identical to the municipal statute. Like the municipal statute, it defines a personnel record as "any information in any form gathered by the county with respect to that employee." N.C.G.S. § 153A-98(a). It provides that "notwithstanding the provisions of [the Public Records Act], personnel files of employees, former employees, or applicants for employment maintained by a county are subject to inspection and may be disclosed only as provided by this section." N.C.G.S. § 153A-98. It then lists the same twelve

exceptions that are listed in the municipal statute. N.C.G.S. § 153A-98(b). The county personnel statute mimics the city personnel statute in all material respects.

Whether a document is a county personnel file, rather than a public record, depends upon the nature of the document and not upon where the document has been filed. News Reporter Co. v. Columbus Cty., 184 N.C. App. 512, 516 (2007). When a portion of a record falls within the county personnel statute, this does not protect the entire record from disclosure as a public record. News Reporter Co. at 512. Instead, the record should be disclosed as a public record with the personnel portions redacted. Id.

In determining what information is "gathered by" a county, the North Carolina Supreme Court held that applications for employment were "gathered by the county" for the purposes of the statute. Elkin Tribune, Inc. v. Yadkin Cty. Bd. of Cty. Comm'rs, 331 N.C. 735, 737-38 (1992). The court gave no extended rationale, but merely held that "the word 'gathered' includes applications that were sent to the County." Elkin Tribune at 738.

**ii. The State Statute**

The state personnel statute is substantially similar to the municipal and county statutes. Like those, it provides that "personnel files of State employees shall not be subject to inspection and examination as authorized by [the Public Records Act]. N.C.G.S. § 126-22(a). And like those, it defines a personnel statute as information about an employee that is "gathered by an employer." N.C.G.S. § 126-22(b)(3). It is different in that it enumerates specific activities that contribute to personnel records, whereas the municipal statute lists such activities only "by way of illustration but not limitation." N.C.G.S. § 160A-168(a).

The state personnel statute establishes a two-part test for what constitutes a "personnel" record. In order for information to be protected by the personnel statute, it must meet two

requirements: "(1) it must have been gathered by an individual's employer...or considered in an individual's application for employment; and (2) the information must relate to at least one of the enumerated activities by the employer with respect to the individual employee or applicant for employment." News & Observer Pub. Co. v. Poole, 330 N.C. 465, 476 (1992).

At issue in Poole was whether State Bureau of Investigation ("SBI") and the documents of an investigative commission (the "Poole Commission") were public records subject to disclosure or personnel records protected by the state personnel statute. The documents contained information about employees of North Carolina State University ("NCSU"), a state agency. After noting that personnel information is only that which is "gathered by" an employer, the court held as follows:

> The state employees who were the subject of SBI reports and Poole Commission meetings were employed by NCSU. Under [the state personnel statute], only personnel information about those employees gathered by the employing state agency is exempt from public inspection under [the state personnel statute]. In the case of the individuals investigated, neither the Poole Commission nor the SBI was the employing state agency. Unless, therefore, the information gathered by the SBI for the Commission was first gathered by the employing state agency...it is not exempt under [the state personnel statute] and is subject to disclosure under the Public Records Act. News & Observer at 476-77.

The Poole court instructed the trial court to "examine the documents *in camera* to decide if any part of them falls within the statutory "personnel file" definition so as to be protected." Id. at 77.

## SUMMARY OF ARGUMENT

The ISS Report is a document made or received by a government agency, and Defendants are its custodians. Plaintiffs argue that the ISS Report is a public record subject to disclosure under N.C.G.S. § 132, while Defendants contend that it is a confidential personnel record protected by N.C.G.S. § 160A-168. In order to be a private personnel record, a document must

be (1) gathered by the city ***and*** (2) gathered "with respect to" an individual employee or employees. If the Court finds that the ISS Report was not "gathered by the city," then it is a public record subject to disclosure in its entirety. If the Court finds that the ISS Report was gathered by the City, but is at least partially not "with respect to" individual employees, then the portions that are not "with respect to" individual employees are public records subject to disclosure.

The ISS report was not "gathered by" the city for purposes of the personnel statute, and therefore is a public record subject to disclosure. Defendants' arrangement for an "internal investigation" with ISS has no bearing on the proper application of North Carolina law. Further, ISS could not act as an agent of Defendants for purposes of the personnel and public records statutes, because Defendants do not have the legal authority to create such an agency relationship. ISS is therefore a private third-party, and any records gathered by it and turned over to the Defendants were not "gathered by" Defendants, making them public records subject to disclosure rather than private personnel records.

All or portions of the ISS Report are not "with respect to" individual city employees, and are therefore public records subject to disclosure. ISS proposed a "written report" that would include a description of "any violations of Town of police policies and rules for consideration by the Town Manager." Further, Defendants' understanding of what constitutes information "with respect to" individual employees is overly broad. For these reasons, the ISS Report likely contains information that is not "with respect to" individual employees.

## ARGUMENT

The ISS Report is unquestionably a document received by the City in transaction of government business, and Defendants are its custodians. N.C.G.S. §§ 132-1(a); 132-2. At issue is

whether it is (1) a public record or (2) a personnel record protected by the privacy provisions of N.C.G.S. § 160A-168.

## I. THE ISS REPORT WAS NOT "GATHERED BY" THE CITY FOR PURPOSES OF THE PERSONNEL STATUTE, AND THEREFORE IS A PUBLIC RECORD SUBJECT TO DISCLOSURE IN ITS ENTIRETY

### a. Defendants' arrangement for an "internal investigation" with ISS has no bearing on the application of North Carolina law.

Defendants claim that ISS, as an agent and representative of the City of Belmont, conducted an internal personnel investigation into allegations of individual mismanagement and misconduct within the Belmont Police Department. Defs.' Resp. to Req. for Admis. 11.

The questions of whether Defendants can create such an agency relationship with ISS and this relationship's effect under North Carolina law are both questions of constitutional and statutory interpretation. Such questions are matters of law that can only be properly determined by courts. Purcell, 761 S.E.2d at 698. Whatever Defendants and ISS may have understood the nature of North Carolina constitutional and statutory law to be when they made their contract, it has no bearing on the actual nature of the law.

### b. The U.S. ISS Agency, LLC is not an agent of the city for the purposes of the personnel statute and the Public Records Act.

Defendants are perfectly within their powers to contract with ISS to perform an investigation. *See* N.C.G.S. § 160A-20.1. However, the fact that a city contracts with a private company to perform a task does not mean that the private company *becomes the city* for purposes of public records law. While the city's grant of power to contract with private companies should be "broadly construed," this simply means that the City is free to contract with such companies for a variety of purposes. N.C.G.S. § 160A-4.

Further, a broad construction of a city's power is only permissible to the extent that it is not "contrary to...the public policy of this State." Id. Given North Carolina's strong public policies in favor of "transparency in government" and "disclosure" of public records, it would be improper to read the personnel or public records statutes as allowing a city to form an agency relationship with a private corporation that expands an exemption to the Public Records Act beyond that which is specifically written in statute. *See* State Employees Ass'n of N. Carolina, Inc., 364 N.C. at 214; N. Carolina Elec. Membership Corp., 108 N.C. App. at 716.

**c. Because ISS is a third-party, any records gathered by it were not "gathered by" Defendants and are therefore public records subject to disclosure rather than confidential personnel records.**

ISS is neither the City of Belmont nor its City Manager. It is further not an agent of the City for purposes of the public records and personnel statutes. Therefore, any records gathered by ISS were not "gathered by the city" for the purposes of N.C.G.S. § 160A-168. "Unless...information...gathered by [ISS] was first gathered by the employing [city], it is not exempt under [the personnel statute] and is subject to disclosure under the Public Records Act." Poole, 330 N.C. at 476-77. This statement from Poole applies to the state personnel statute, which is for these purposes identical to the municipal personnel statute.

Information gathered by ISS was not first gathered by Defendants. Defendants admit that in acquiring the services of ISS, Defendants made a decision not to use City employees to conduct the investigation of the Belmont Police Department. Defs.' Resp. to Req. for Admis. 2. This despite the fact that the City employs human resources staff. Defs.' Resp. to Req. for Admis. 3. Part of Defendants' rationale for not using its own staff was to ensure an independent investigation. Defs.' Resp. to Req. for Admis. 4.

Whether to protect such third-party investigations from disclosure as public records is a policy decision to be made by the legislature, not by municipalities and third-party private companies. Current North Carolina law neither allows Defendants to delegate away their rights and duties under public records law, nor protects third-party investigations as private personnel records. Should the legislature choose to alter the public records statute to protect such records, it is free to do so; to date, it has not. The ISS report is therefore not "gathered by" Defendants for purposes of N.C.G.S. § 160A-168, making it a public record subject to disclosure in its entirety.

## II. ALL OR PORTIONS OF THE ISS REPORT ARE NOT "WITH RESPECT TO" INDIVIDUAL CITY EMPLOYEES, AND ARE THEREFORE PUBLIC RECORDS SUBJECT TO DISCLOSURE

Because Defendants will not let Plaintiffs see the ISS Report, it is difficult for Plaintiffs to know exactly what is in it. Plaintiffs know only that the report cost more than $90,000 and spans over 150 pages. Defs.' Resp. to Req. for Admis. 7, 8. For the reasons stated below, Plaintiffs believe that the ISS Report is all or partially not a document "with respect to" individual city employees. If the Court finds that logically the ISS Report cannot be a document "with respect to" individual employees, then it should declare the entire report a public record subject to disclosure. However, if the Court believes that only portions of the ISS Report may be "with respect to" individual employees, Plaintiffs respectfully request that the Court conduct an *in camera* review to determine what portions qualify as public records subject to disclosure.

### A. Defendants and ISS agreed that ISS would conduct an investigation into "misconduct and mismanagement."

Records are only subject to the provisions of N.C.G.S. § 160A-168 if gathered "with respect to" a particular employee. Defendants claim that they contracted with ISS to investigate "allegations of individual mismanagement and misconduct within the Belmont Police Department." Defs.' Resp. to Req. for Admis. 1. However, Defendant City Manager originally

considered this to be simply "an investigation of misconduct and mismanagement allegations." *See* Exhibit B. ISS also omitted the word "individual" in connection with "mismanagement and misconduct" in its Preamble to Investigative Interviews and Proposal. *See* Exhibits C and D.

Whether Defendants and ISS's omission of the word "individual" is indicative of their understanding of the ISS Report's breadth is a question of fact not properly determined at summary judgment. However, it would also be improper to *assume* that Defendants understood the investigation to be one into "individuals" merely because Defendants say so. The only fact on this topic that has been conclusively established at this stage is that in their original correspondences regarding the investigation, Defendants and the ISS Agency described the investigation as one into "misconduct and mismanagement," and only began to describe the investigation as being about "individual mismanagement and misconduct" after the filing of this lawsuit.

An investigation into "misconduct and mismanagement" could touch on broad policy issues. For example, it might consider the structure of BPD's chain of command, the measures used to keep high-ranking employees accountable, and any policy recommendations from ISS to improve BPD's operations in the future. If necessary, the Court should conduct an *in camera* review to decide if such portions of the ISS Report exist.

**B. ISS contemplated that the ISS Report would touch on broader issues than mere "individual" conduct.**

Defendants claim that the ISS Report is, as a matter of law, limited to issues that are with respect to individual employees. However, this is contradicted by ISS's understanding of the nature of their written report. ISS proposed a "written report" that would include a description of "any violations of Town of police policies and rules for consideration by the Town Manager," and further stated in its proposal:

> The investigation will consist of the following tasks: ...Prepare a written report to the Town Manager that documents all relevant facts and circumstances found by the investigation and addresses the issues that are critical to the Town and the police department. The report will summarize the investigative findings including any violations of Town or police policies and rules for consideration by the Town Manager...ISS investigators will be available as needed for consultation regarding any future actions based upon investigative results. *See* Exhibit D.

A 150-page report containing "investigative findings including any violations of Town or police policies and rules for consideration by the Town Manager," and which makes consultants "available as needed...regarding any future actions based upon investigative results" necessarily must touch on broader policy issues than mere individuals. If necessary, the Court should conduct an *in camera* review to decide if such portions of the ISS Report exist.

**C. Defendants' understanding of what constitutes information "with respect to" individual employees is overly broad.**

In their public records request, Plaintiffs asked for "a complete copy" of the ISS Report. *See* Exhibit F. Defendants denied Plaintiffs' public records request in its entirety. Defs.' Resp. to Req. for Admis. 12. This despite the fact that a public records request may not be denied on the grounds that confidential and nonconfidential information are comingled. N.C.G.S. § 132-6(c). If it is necessary to separate confidential and nonconfidential information, it is Defendants' responsibility to bear the cost of that separation. Id. Defendants' complete denial of Plaintiffs' public records request indicates Defendants' belief that the entire ISS Report is a record "with respect to" individual city employees. Information "with respect to" individual employees admittedly includes employee social security numbers, applications for employment, and home addresses. Keeping such information confidential serves the legislatures' policy objective of protecting employee privacy. But there is no statutory or case law to suggest that the statute covers broad investigations into mismanagement and misconduct on an institutional scale.

**D. The ISS Report likely contains information that is not "with respect to" individual employees.**

Absent a "clear exemption" to the Public Records Act, documents made or received by governments in the conduct of government business must be made available for public inspection. Virmani, 350 N.C. at 462. To withhold the ISS Report based on a broad and speculative reading of N.C.G.S. § 160A-168 is contrary to North Carolina's policy in favor of "liberal access to public records." Jackson, 768 S.E.2d at 24.

The ISS Report is over 150 pages in length. Defs.' Resp. to Req. for Admis. 8. It took several months to compile and produce. It may contain an Executive Summary, Introduction, and Appendices, similar to the report produced by the defendants in the Guildford County case of Roch Smith v. City of Greensboro. Plaintiffs cannot be sure of what is in the ISS Report, as Defendants will not allow them to see it. However, it is extremely unlikely that every word of every section of the ISS Report is "with respect to" individual employees. Any portions that are not "with respect to" individual employees are a matter of public record subject to disclosure under N.C.G.S. § 132.

## CONCLUSION

For the reasons stated above, summary judgment should be awarded to the Plaintiffs. The Court should compel production of public records in accordance with N.C.G.S. § 132-9(a) and award Plaintiffs' attorneys fees in accordance with N.C.G.S. 132-9(c).

Respectfully submitted, this the 6th day of May, 2016.

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CERTIFICATE OF SERVICE

I certify that the attached MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT has been served on the Defendants by depositing a copy with the United States Postal Service with sufficient postage, addressed to:

Brad P. Kline
Cranfill Sumner & Hartzog LLP
P.O. Box 30787
Charlotte, NC 28320

This the 6th day of May, 2016.

Elliot Engstrom
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Center for Law and Freedom
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*Counsel for Plaintiffs*

# EXHIBIT A

# Defendants' Responses to Plaintiffs' First Set of Requests for Admissions

| | |
|---|---|
| STATE OF NORTH CAROLINA<br><br>COUNTY OF GASTON | IN THE GENERAL COURT OF JUSTICE<br>SUPERIOR COURT DIVISION<br>15-CVS-3203 |
| DAN DEITZ and ELLEN DEITZ TUCKER,<br><br>Plaintiffs,<br><br>v.<br><br>CITY OF BELMONT, BARRY WEBB, in his official capacity as City Manager for the City of Belmont,<br><br>Defendants. | **DEFENDANTS' RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS** |

Defendants City of Belmont and Barry Webb, in his official capacity as City Manager for the City of Belmont, by and through undersigned counsel and pursuant to Rules 26 and 33 of the North Carolina Rules of Civil Procedure, provides these responses to the Interrogatories served by Plaintiffs, Dan Deitz and Ellen Deitz Tucker. Each response separately and fully answers each Interrogatory, except those to which objections are made. The interrogatories, objections, and responses are attached.

## GENERAL OBJECTIONS AND LIMITATIONS

1. Defendants object to the Discovery Requests to the extent that they purport to impose on them obligations beyond those imposed by the North Carolina Rules of Civil Procedure.

2. Defendants object to the Discovery Requests as overly broad and unduly burdensome to the extent that they seek the identification and disclosure of information or documents that are irrelevant or immaterial or are otherwise not reasonably calculated to lead to the discovery of admissible or relevant evidence. Defendants further object to the Discovery Requests as overly broad and unduly burdensome to the extent they seek information beyond the custody, control, or scope of knowledge of Defendants.

3. Defendants object to the Discovery Requests as overly broad and unduly burdensome to the extent that they seek "all" information concerning a given subject matter. In accordance with the North Carolina Rules of Civil Procedure, Defendants will conduct a diligent, good faith search and will provide responsive information.



Exhibit A

4. Defendants object to the Discovery Requests to the extent that they purport to require the identification and disclosure of information or documents that are subject to the attorney-client privilege, attorney work product doctrine, or any other applicable privilege or doctrine that may be asserted. Defendants claim such privileges and protections and excludes privileged and protected information and documents from its responses. Any disclosure of such privileged or protected information or documents is inadvertent and is not intended to waive those privileges or protections.

5. Defendants' responses to the Discovery Requests are not intended to waive or prejudice any objections it may assert now or in the future, including, without limitation, objections as to the admissibility of any responses at any proceeding in this matter.

The general objections are applicable to, and incorporated in, each of Defendants' responses as if specifically set forth in each response. The stating of specific objections to a particular Discovery Request, or the absence of any specific objections to a particular Discovery Request, shall not be construed as a waiver of Defendants' General Objections.

## RESPONSES TO REQUESTS FOR ADMISSION

1. Defendants reached an agreement with the U.S. ISS Agency, LLC under which the U.S. ISS Agency, LLC would conduct an investigation into the Belmont Police Department.

**RESPONSE: It is admitted that the City of Belmont reached an agreement with the U.S. ISS Agency, LLC to conduct a personnel investigation, as an agent and representative of the City of Belmont, into allegations of individual mismanagement and misconduct within the Belmont Police Department.**

2. In acquiring the services of the U.S. ISS Agency, LLC, Defendants made a decision not to use City employees to conduct the investigation of the Belmont Police Department.

**RESPONSE: Admitted.**

3. The City employs human resources staff.

**RESPONSE: Admitted.**

4. One of the reasons that Defendants retained the services of the U.S. ISS Agency, LLC was to ensure an independent investigation.

**RESPONSE: Admitted.**

5. The U.S. ISS Agency, LLC is not and never has been an agent of the City of Belmont.

**RESPONSE: Denied. The U.S. ISS Agency, LLC, as an agent and representative of the City of Belmont, conducted an internal personnel investigation into allegations of individual mismanagement and misconduct within the Belmont Police Department.**

6. The U.S. ISS Agency, LLC was or will be paid for its services with funds other than those budgeted to pay the salaries of City employees.

**RESPONSE: Admitted.**

7. The total cost of the ISS Report was in excess of $90,000.

**RESPONSE: Admitted.**

8. The ISS Report is a document spanning over 150 pages.

**RESPONSE: Admitted.**

9. There is information within the ISS Report that touches and concerns Plaintiffs' sister's death.

**RESPONSE: Denied.**

10. The U.S. ISS Agency, LLC is a limited liability corporation comprised of individuals who are not employees of the City of Belmont.

**RESPONSE: Admitted, upon information and belief.**

11. The U.S. ISS Agency, LLC is a limited liability corporation comprised of individuals who are not representatives of the City of Belmont.

**RESPONSE: Denied to the extent the U.S. ISS Agency, LLC, as an agent and representative of the City of Belmont, conducted an internal personnel investigation into allegations of individual mismanagement and misconduct within the Belmont Police Department.**

12. Plaintiffs filed a public records request seeking access to the ISS Report, and Defendants denied that request.

**RESPONSE: Admitted.**

13. The ISS Report, or portions thereof, contains information on subjects other than individual City employees.

**RESPONSE: Denied.**

14. The ISS Report was not "gathered by the [Defendants]" for purposes of N.C. Gen. Stat. § 160A-168.

**RESPONSE: Denied.**

15. The ISS Report, or portions thereof, is not a record "with respect to" individual employees for the purposes of N.C. Gen. Stat. § 160A-168.

**RESPONSE: Denied.**

## RESPONSES TO INTERROGATORIES

1. For each of Plaintiffs' Requests for Admission that Defendants denied in whole or in part, please provide the following information:

   a. State the facts upon which Defendants have based their denial;

   b. Identify all documents which support Defendants' denial and;

   c. Identify all persons with knowledge of the facts that support Defendants' denial.

**ANSWER: Objection. Plaintiff's Interrogatory No. 1 seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents subject to the provisions of N.C.G.S. §160A-168. Subject to, and without waiving said objection, the facts upon which Defendants based their denial of Requests for Admissions Nos. 1, 5 and 11 are set out in Defendants' responses to said Requests.**

Regarding Request for Admission No. 9, Defendants based their denial upon the information contained in the document referenced by Plaintiffs as the "ISS Report". Defendants have cited the provisions of N.C.G.S. § 160A-168 in support of their decision not to disclose the contents of said document.

Regarding Request for Admission Nos. 13 and 15, please see Defendants' response to Plaintiff's Interrogatory No. 5.

Regarding Request for Admission No. 14, please see Defendants' response to Plaintiff's Interrogatory No. 4.

2. Please provide the names and contact information for those employees of Defendants involved in reviewing data or records, preparing recommendations, and making final decisions relating to the retention of the U.S. ISS Agency, LLC.

ANSWER: Barry Webb, City Manager for the City of Belmont. Any attempts to contact Mr. Webb should be made through undersigned counsel.

3. Please provide a list of individuals outside of the City of Belmont who were consulted by Defendants or their employees regarding the ISS Report.

ANSWER: Objection. Plaintiff's Interrogatory No. 3 is vague. Subject to, and without waiving said objection, Defendants are not aware of any individuals outside of the City of Belmont who were consulted by the City of Belmont, or any employees of the City of Belmont, regarding the ISS report, other than undersigned counsel.

4. If you contend that the ISS Report was "gathered by the city" for the purposes of N.C. Gen. Stat. § 160A-168:

a. State the legal and factual basis for this contention;

b. Identify by name and address all persons known to Defendants to have knowledge of the facts stated in response to subpart (a) of this Interrogatory; and

c. Identify any and all documents which contain information relating or referring to the facts stated in response to subpart (a) of this Interrogatory.

**ANSWER: Objection. Plaintiff's Document Request No. 4 seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents subject to the provisions of N.C.G.S. § 160A-168. Subject to, and without waiving said objections, Defendants do contend the document referenced by Plaintiffs as the "ISS Report" is a document that "was gathered by the City" for purposes of N.C.G.S. § 160A-168. Specifically, the U.S. ISS Agency, LLC was retained by the City of Belmont to act an agent and representative of the City of Belmont while conducting an internal personnel investigation into allegations of individual mismanagement and misconduct within the Belmont Police Department.**

**Regarding individuals known to have facts stated in this response, please see Defendants' response to Plaintiff's Interrogatory No. 6, as well as undersigned counsel and Parks Wilson, City Attorney for the City of Belmont.**

**Regarding documents containing information related to the facts stated in this response, other than the contents of the documents referred to by Plaintiff as the "ISS Report," which Defendants have cited the provisions of N.C.G.S. § 160A-168 in support of**

their decision not to disclose, please see the documents attached hereto as Exhibit A, Exhibit B and Exhibit C.

5. If you contend that the ISS Report is a document "with respect to" individual City employees in its entirety for purposes of N.C. Gen. Stat. § 160A-168;

a. State the legal and factual basis for this contention;

b. Identify by name and address all persons known to Defendants to have knowledge of the facts stated in response to subpart (a) of this Interrogatory; and

c. Identify any and all documents which contain information relating or referring to the facts stated in response to subpart (a) of this Interrogatory.

**ANSWER: Objection. Plaintiff's Document Request No. 5 seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents subject to the provisions of N.C.G.S. § 160A-168. Subject to, and without waiving said objections, Defendants do contend the document referenced by Plaintiffs as the "ISS Report" is a document "with respect to" individual City employees for purposes of N.C.G.S. § 160A-168. Specifically, the U.S. ISS Agency, LLC was retained by the City of Belmont to act an agent and representative of the City of Belmont while conducting an internal personnel investigation into allegations of individual mismanagement and misconduct within the Belmont Police Department. These allegations were in reference to complaints made by employees during their exit interviews with Debra Brown, City Clerk for the City of Belmont, and made in reference to specific employees of the City of Belmont.**

Regarding individuals known to have facts stated in this response, please see Defendants' response to Plaintiff's Interrogatory No. 6, as well as undersigned counsel and Parks Wilson, City Attorney for the City of Belmont.

Regarding documents containing information related to the facts stated in this response, other than the contents of the documents referred to by Plaintiff as the "ISS Report," which Defendants have cited the provisions of N.C.G.S. § 160A-168 in support of their decision not to disclose, please see the documents attached hereto as Exhibit A, Exhibit B and Exhibit C.

6. Please identify any person Defendants plan to call as a witness at the trial of this case. For each witness identified, state the substance of the expected testimony.

ANSWER: Objection. Plaintiff's Interrogatory No. 6 seeks information subject to the attorney-client privilege and/or the work product doctrine. By way of further answer, Defendants have not yet made a determination as to the persons who may be called to testify at the trial of this matter. However, at this time Defendants list the following individuals:

(1) Barry Webb, City Manager for the City of Belmont. It is anticipated Mr. Webb may testify regarding the circumstances surrounding his decision to retain U.S. ISS Agency as an agent and representative of the City of Belmont to conduct an internal personnel investigation into allegations of individual mismanagement and misconduct within the Belmont Police Department; the findings made in the report produced following the investigation; and, any personnel decisions made following his review of the report produced following the investigation.

(2) Debra Brown, City Clerk for the City of Belmont. It is anticipated Ms. Brown may testify regarding complaints made by employees during their exit interviews with her regarding specific employees of the City of Belmont.

(3) David Graham and Michael Sloop, U.S. ISS Agency. It is anticipated Mr. Graham and Mr. Sloop may testify regarding their internal personnel investigation as an agent and representative of the City of Belmont into allegations of individual mismanagement and misconduct within the Belmont Police Department, and the findings of said investigation.

Defendants reserve the right supplement this answer in accordance with any scheduling order entered into this matter and the North Carolina Rules of Civil Procedure.

7. With respect to each person who you expect to call as an expert witness at the hearing to be held in this matter, please provide the following information:

a. Identify each such person;

b. For each person identified, state the subject matter on which the expert is expected to testify;

c. For each person identified, state the substance of the facts and opinions of which the expert is expected to testify;

d. For each person identified, state a summary of the grounds for each opinion identified in response to subpart (c) of this Interrogatory.

ANSWER: Objection. Plaintiff's Interrogatory No. 7 seeks information subject to the attorney-client privilege and/or the work product doctrine. By way of further answer, Defendants have not yet made a determination as to the persons who may be called as an expert witness at the trial of this matter. Defendants will supplement this answer in accordance with any scheduling order entered into this matter and the North Carolina Rules of Civil Procedure.

8. Please identify all persons answering these interrogatories on your behalf, and every other person who provided or helped provide information used in answering or responding, and for each person, identify the specific interrogatory to which the person contributed information.

ANSWER: These answers and responses were prepared by counsel with assistance provided by Barry Webb, City Manager for the City of Belmont.

## RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents relied upon or consulted by Defendants in preparing Defendants' responses to the Plaintiffs' First Set of Interrogatories.

RESPONSE: Objection. Plaintiff's Document Request No. 1 is overbroad and seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents subject to the provisions of N.C.G.S. § 160A-168. Subject to, and without waiving said objection, see documents attached hereto.

2. All documents identified in response to Plaintiff's First Set of Interrogatories.

**RESPONSE: Objection. Plaintiff's Document Request No. 2 is vague, overbroad, and seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents whose disclosure is subject to the provisions of N.C.G.S. §160A-168. Subject to, and without waiving said objection, see documents attached hereto.**

3. All documents Defendants relied on for their retention of the services of the U.S. ISS Agency, LLC.

**RESPONSE: Objection. Plaintiff's Document Request No. 3 is vague and overbroad. Subject to, and without waiving said objection, please see attached Exhibit A.**

4. All communications between Defendants and the U.S. ISS Agency, LLC.

**RESPONSE: Objection. Plaintiff's Document Request No. 4 seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents whose disclosure is subject to the provisions of N.C.G.S. §160A-168. Subject to, and without waiving said objection, please see attached Exhibit B.**

5. Copies of any contractual agreements between Defendant and ISS.

**RESPONSE: Defendants have no responsive documents in their possession, other than the attached Exhibit A and Exhibit C.**

6. Copies of any ISS invoices or bills in Defendants' possession.

**RESPONSE: Please see attached Exhibit C.**

7. Copies of any formal recommendations or policies drafted by Defendants as a result of receipt of the ISS report.

**RESPONSE: Objection. Plaintiff's Document Request No. 7 seeks information subject to the attorney/client privilege and/or the attorney work product doctrine, as well as documents whose disclosure is subject to the provisions of N.C.G.S. §160A-168. Subject to, and without waiving said objection, Defendants have no responsive documents in their possession.**

This the 18th day of December, 2015.

CRANFILL SUMNER & HARTZOG, LLP

By: _____

Brad P. Kline, Esq. (State Bar # 34045)
Attorneys for Defendants
P.O. Box 30787
Charlotte, NC 28230
Telephone (704)332-8300
Facsimile (704) 332-9994

## CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the attached ***Defendants' Responses to Plaintiffs' First Set of Requests for Admission, Interrogatories and Requests for Production of Documents*** on all parties to this cause by:

____ Hand delivering a copy hereof to the attorney for each said party addressed as follows:

__X__ Depositing a copy hereof, postage prepaid, in the United States Mail, addressed to the attorney for each said party as follows:

____ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:

____ Telecopying a copy hereof to the attorney for each said party as follows:

Elliot Engstrom
Center for Law and Freedom
Civitas Institute
100 S. Harrington St.
Raleigh, NC 27603

Christian Ayers
Brett Dressler
Sellers Ayers Dortch & Lyons
301 S. McDowell St., Ste. 410
Charlotte, NC 28204

This the 15th day of December, 2015.

CRANFILL SUMNER & HARTZOG, LLP

BY: _____

Bradley P. Kline, Esq. (State Bar # 34045)
Attorneys for Defendants
P.O. Box 30787
Charlotte, NC 28230
Telephone (704)332-8300
Facsimile (704) 332-9994

# EXHIBIT B

*Email Correspondence between Defendant City Manager and ISS*

http://www.isecureus.com

ISS

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**From:** Barry Webb [mailto:blw@cityofbelmont.org]
**Sent:** Tuesday, October 07, 2014 10:02 AM
**To:** David Graham
**Subject:** RE: Waiver Form Updated 10/3/14

David,

Just let me know at your convenience about our getting together to discuss moving forward. Thanks.

Barry

**From:** David Graham [mailto:dgraham@isecureus.com]
**Sent:** Monday, October 06, 2014 9:59 PM
**To:** Barry Webb
**Subject:** Re: Waiver Form Updated 10/3/14

Thanks,

David Graham

Barry Webb <blw@cityofbelmont.org> wrote:

David,
Got the council's approval this evening and informed that an investigation of misconduct and mismanagement allegations would be conducted. Will call tomorrow to plan next steps.
Barry

Sent from my iPhone

On Oct 3, 2014, at 5:55 PM, "David Graham" <dgraham@isecureus.com> wrote:

> Thanks,
>
> David Graham
>
>
> Barry Webb <blw@cityofbelmont.org> wrote:
>
> David,
>



Exhibit B

# EXHIBIT C

# *ISS Preamble to Investigative Interview*

**Preamble to Investigative Interviews**
**City of Belmont**
**Belmont Police Department**

The City of Belmont has employed the US ISS Agency, LLC (ISS) to conduct an independent, confidential internal investigation of allegations of misconduct and mismanagement within the Belmont Police Department. In this capacity, ISS investigators will act as the agent of the City of Belmont and have the authority to conduct the investigation. As this is an internal personnel investigation, all City of Belmont and Belmont Police Department directives, policies, and procedures regarding such investigations apply. ISS investigators have authority to take statements from employees and witnesses, examine records, and perform all necessary tasks to investigate fully these issues and allegations. All interviews will be audio recorded. Employees are expected to cooperate with ISS investigators as they would with City officials or police supervisors. At the conclusion of this investigation, ISS will present a report of its findings to the City Manager for consideration and resolution.

Exhibit
C

# EXHIBIT D

# *ISS Proposal*

**Brad Kline**

| | |
|---|---|
| **From:** | David Graham <dgraham@isecureus.com> |
| **Sent:** | Tuesday, September 09, 2014 11:43 AM |
| **To:** | Barry Webb |
| **Cc:** | Robert Schurmeier |
| **Subject:** | Proposal - Belmont |
| **Attachments:** | Belmont Proposal 9 08 2014 (R).pdf |

Barry,

Attached is the revised proposal. If you have any questions, just let us know. Friday at 9:00 a.m. works for Bob and me.

Thanks,
David

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**From:** David Graham
**Sent:** Monday, September 08, 2014 3:54 PM
**To:** Barry Webb (bwebb@cityofbelmont.org)
**Subject:** Proposal - Belmont

Barry,

Attached is our proposal for the Belmont project. If you have any questions, my cell phone is best, (704) 621-7981. Thanks for considering us.

Best Regards,

David Graham
U.S. ISS Agency, LLC
Director of Operations
13801 Reese Boulevard West - Suite 180
Huntersville, NC 28078
**Office:** (704) 248-5674 **Cell** (704) 621-7981
**Fax** (704) 248-5680
**Email:** dgraham@isecureus.com

http://www.isecureus.com



Exhibit D

September 8, 2014

Mr. Barry Web
PO Box 431
Belmont, North Carolina 28012

Dear Mr. Webb:

The US ISS Agency, LLC (ISS) is pleased to offer the attached proposal for investigative services to the Town of Belmont. We have presented a comprehensive approach to the investigation that we believe will meet your needs. We would particularly emphasize, as our proposal describes, ISS has experience in conducting internal investigations that is unique in our field. Our project staff has conducted hundreds of internal police department investigations, including many similar to what you require. We understand the confidential and sensitive nature of such investigations and are we able to provide you with a thorough, complete, and well-documented investigation that will enable you to make the best decisions regarding the issues.

I will be happy to answer any questions or discuss our proposal with you at your convenience. I can be reached at my office phone (704) 248-5674, or anytime on my cell phone, (704) 621-7981. Our team looks forward to working with you and the Town of Belmont.

Best regards,

David L. Graham

David Graham
U.S. ISS Agency, LLC
Director of Operations
13801 Reese Boulevard West - Suite 180
Huntersville, NC 28078
**Office:** (704) 248-5674 **Cell** (704) 621-7981
**Fax** (704) 248-5680
**Email:** dgraham@isecureus.com

*Proposal*
*Town of Belmont*
*Internal Personnel Investigation Services*
*September 8, 2014*

*Project Proposal*

The US ISS Agency, LLC (ISS) understands that the Town of Belmont seeks to employ independent investigators to conduct an internal, unbiased investigation into allegations of misconduct and mismanagement within the Belmont Police Department. ISS proposes to provide these private investigative services to the Town of Belmont. We offer, specifically, to investigate all allegations made, to accurately establish the facts and circumstances involved, to document the impact and consequences of any inappropriate behavior, and prepare a report for the Town Manager that will document all findings and serve as the basis for decisions related to these allegations.

## *Company Overview*

### Who We Are

The US ISS Agency, LLC (ISS) is a private security firm located in Huntersville, North Carolina. Robert Schurmeier, a retired deputy chief of police from the Charlotte-Mecklenburg Police Department, and Paul Lyon, a retired ATF supervisory agent founded the company in 2004. At its inception, ISS provided pre-employment screening services and its first client was the City of Charlotte. Since that time, ISS has expanded its lines of business to include private investigations for both the private and public sectors, due diligence investigations for key hires, and risk and security consulting for corporations, government, and law enforcement. ISS is licensed as a security company in North and South Carolina.

### Experience

The ISS staff is comprised of law enforcement veterans and experienced data analysts. Four former deputy chiefs of police of the 2,400 member Charlotte-Mecklenburg Police Department are part of the ISS team. Bob Schurmeier commanded the CMPD investigative division for a number of years and served as interim chief of police. Dave Stephens served as the head of the department's Internal Affairs for a decade, overseeing all personnel investigations. Jack Boger also served as the interim chief of police and led the administrative division, managing the human resources, training, and planning functions. David Graham served for many years in various investigative capacities, including Homicide and Internal Affairs, before retiring as deputy chief of the department's investigative division. In addition, Mike Sloop recently retired as a patrol supervisor serving in several administrative roles within patrol as well as other areas

of the Department. Our data analysts are knowledgeable and experienced in the field. They have expertise in database searches, data analyses, and report writing.

ISS's experience in the field of internal investigations, particularly in police departments, is unparalleled. Dave Stephens and David Graham have many years of experience conducting and managing these types of investigations. This experience includes not only citizen complaints such as use of force, police-involved shootings, unlawful arrest, and unbecoming conduct, but also internal allegations such as harassment, hostile work environment, discrimination, criminal allegations, and all other internal policy violations. Jack Boger has many years experience managing personnel issues including hiring, firing and discipline, as well as policy development and application. Bob Schurmeier has extensive experience in conducting and managing the most serious and complex criminal investigations, as well as overseeing the application of personnel policy.

**Quality**

ISS is committed to the highest quality services. In furtherance of that goal, one of our staff, Jack Boger, is a former college English instructor who has helped us identify a staff of editors. They review completed reports to ensure they are well-written, technically correct, concise, and understandable. Samples of all work are reviewed by management to ensure that they meet our high standards. ISS employs only experienced investigators and analysts with proven records of accomplishment in the field to ensure that investigations are through, complete, and properly documented. Their work is supervised by staff with over a century of experience in the field.

**Integrity**

ISS understands the importance of integrity to the investigative process. As former law enforcement officers with years of experience in upholding ethical standards, we know that collecting information lawfully and properly, conducting appropriate analyses of that information and accurately reporting it is critical to the investigative function. ISS is committed to integrity in information gathering, analyses and reporting.

**ISS Services**

ISS offers a range of services, beginning with pre-employment screening. Other services include corporate and government related private investigations, due diligence investigations for key hires, biometric fingerprinting, computer forensics, security, and risk consulting, and consulting in police policies and practices. ISS holds company private investigations licenses in North and South Carolina and has investigators licensed in both states.

We serve a variety of clients from both the public and private sectors. We are currently on the federal GSA 738-X schedule and hold a contract with the Transportation Security Administration providing vetting services. ISS has completed over 4,000 background investigations for TSA, while meeting all contractual standards for quality and timeliness. We also serve other municipal governments and corporations providing pre-employment screening services and due diligence investigations. Our clients include corporations who utilize our services for executive hiring and governments who use ISS to screen candidates for city manager and other executive level positions.

**Selected Clients**
Our clients include:

- Transportation Security Administration
- City of Charlotte, North Carolina
- Mecklenburg County, North Carolina Sheriff's Office
- Davidson College Police Department
- Charlotte Fire Department
- Local police agencies
- Fortune 500 and 100 companies

*Town of Belmont Project Team*
The ISS Project Team for the Town of Belmont is comprised of five veteran law enforcement managers or supervisors with well over a century of experience among them. All are retired deputy chiefs of police or supervisors from the Charlotte-Mecklenburg Police Department. Each brings a different perspective to this project based upon their background, education, and experience.

*Project Leader: David Graham*
David Graham served with the Mecklenburg County Police Department, beginning in 1981, until its merger with the Charlotte Police Department in 1993. David worked in most areas of the Department, retiring in 2010 as Deputy Chief of Police of the Investigative Services Group. More than 17 years of David's career was in investigations including criminal investigations, Internal Affairs, and Intelligence. David is a graduate of the University of North Carolina at Charlotte with a Bachelor of Science degree in Law Enforcement and Administration. David also obtained a Master of Criminal Justice degree with a concentration in police administration and job satisfaction from UNC-Charlotte. In addition, he is a graduate of the Senior Management Institute for Police and the Department of Defense Polygraph Institute. David is a licensed private investigator in North and South Carolina. David will manage this project as well assist in conducting the investigation.

*Investigator: Dave Stephens*
Dave brings a wealth of experience from his 29 years in policing. He retired from the CMPD as deputy chief of Field Services, leading the department's 1,300 officer patrol division. He has significant senior management experience with organizational issues, administration, homeland security planning, crime prevention, and CPTED programs. He has extensive investigative expertise gained from his ten years as head of the CMPD Internal Affairs, managing sensitive and confidential personnel investigations. Dave is a licensed private investigator in North Carolina. He holds a B.A. in Political Science from the University of North Carolina at Charlotte. He is also a graduate of the Administrative Officers Management Program at N. C. State University and the Senior Management Institute for Police sponsored by the Police Executive Research Forum and the JFK School of Government at Harvard University.

*Investigator: Jack Boger*
Jack specializes in addressing technical, organizational, and administrative issues facing public and private organizations. Much of his career was spent in executive levels of the CMPD where

he rose to the rank of deputy chief and served for a time as interim chief before retiring. He brings broad experience in budgeting, staffing, hiring, and promotional procedures, human resources, and policy development. Interestingly, prior to becoming a police officer, Jack taught English at UNC-Charlotte.

Jack holds a B.A. and M.P.A. from UNC-Charlotte and an M.A. in English from the University of Florida. He is also a graduate of the Northwestern Traffic Institute and the Senior Management Institute for Police. Jack is a licensed private investigator in North Carolina.

*Investigator: Mike Sloop*
Mike retired from the Charlotte Mecklenburg Police Department with 30 years of service ending his diverse career as a patrol supervisor. He oversaw personnel matters, staffing, budget, inventory, and equipment needs while developing crime prevention strategies that focused police resources on crime patterns and repeat offenders. Mike served in criminal investigations as a detective, on SWAT, and in an administrative role in the Department's Human Resource Department. Mike holds as associate degree from Central Piedmont Community College.

*Bob Schurmeier*
Bob completed his first career after 29 years with the Charlotte-Mecklenburg Police Department (CMPD), retiring as deputy chief over Investigations. Bob pioneered a number of initiatives that have become models for other law enforcement agencies. Among them: he established the Department's innovative Homicide Cold Case Unit and forged partnerships with local hospitals to establish procedures and training to better preserve forensic evidence in the course of emergency room treatment.

Bob is a past president of the North Carolina Chapter of the FBI National Academy Associates and the North Carolina Police Executives Association. He is a graduate of the Secret Service's Dignitary Protection School, the Senior Management Institute for Police, and the FBI National Academy. He earned a B.A. in Political Science from the University of North Carolina at Chapel Hill. Bob is a licensed private investigator in North and South Carolina.

*Scope of Work*
ISS proposes to conduct this investigation in conformance to all applicable laws and personnel policies of the Town of Belmont, as well as best practices in the field. The investigation will involve review of all allegations and issues pertaining to employee misconduct, the collection, and review of documentary evidence, interviewing all persons who may have relevant information regarding the allegations and issues, the analysis and evaluation of evidence gathered, and the preparation of a thorough and complete report documenting both the investigative steps taken and our findings.

The investigation will consist of the following tasks:

- Meet with the Town Manager to clarify expectations, agree upon the scope of the investigation, and obtain his full and complete perspective.

- Collect and review all available written documents, recordings, or similar documentary materials related to the allegations in question. This would include Town and police

rules and policies, which define standards of employee conduct and limits on behavior that are relevant to the allegations made or issues identified. Investigators will review all of the information to gain a thorough understanding of the allegations and issues themselves, the context of the allegations and issues, and procedures that should be followed.

- Develop an investigative plan based upon the information listed above. This plan, among other things, will identify the individuals to be interviewed, the information and other evidence to be sought, and the time and resources required to do this. This investigative plan may be modified based upon information gathered during the course of the investigation, but this will be done with the participation and concurrence of the Town Manager or his designee.

- Prepare written summaries of all investigative interviews and similarly document any findings made.

- Evaluate all evidence collected during the investigation to determine the facts and circumstances of the case. This process of assessment and reassessment will occur consistently throughout the investigation to keep work on the most productive course, to ensure that key issues are addressed, and to prevent omissions. As noted above, this analysis may indicate that additional work is required.

- Prepare a written report to the Town Manager that documents all relevant facts and circumstances found by the investigation and addresses the issues that are critical to the Town and the police department. The report will summarize the investigative findings including any violations of Town or police policies and rules for consideration by the Town Manager.

- ISS investigators will meet regularly with the Town Manager to ensure that he is informed of the progress of the investigation.

- ISS investigators will be available to meet with Town officials as needed and requested by the Town Manager.

- ISS investigators will be available as needed for consultation regarding any future actions based upon investigative results.

*Confidentiality*

ISS understands that this investigation is an internal personnel investigation, not a criminal inquiry. As such, information gathered will be protected and kept confidential. In addition to town or police policy regarding such investigations, the information collected is protected by N.C.G.S. 160A-168: *Privacy of Employee Personnel Records* and cannot be released except under the terms of this law. ISS, accordingly, will ensure that all information collected is protected and held in compliance with all applicable laws and Town of Belmont policies. In all cases, and without exception, ISS will defer to the Belmont Town Manager, or other parties

authorized by the Belmont Town Manager, in the release and discussion of information related to this investigation.

*Timeline*
ISS is prepared to begin work upon approval of this proposal. We anticipate that work can be completed within a six week period.

*Costs*
The costs related to this project are primarily related to investigators' time and expenses. We anticipate some costs for copying, records fees, and other minor miscellaneous costs.

*Investigator Time*
Investigative services will be billed at an hourly rate. The costs for the investigators include hours spent on tasks such as obtaining and reviewing records; scheduling and conducting interviews, reviewing interviews and preparing written interview summaries, preparing written reports, consulting with the Town Manager, meetings with town officials, and travel to and from work sites. Our understanding is that between 12 and 20 potential employees and others associated with the investigation will need to be interviewed during the investigation. Interviews are likely to average one to two hours each with some lasting longer. Our experience tells us that producing accurate written interview summaries requires time equal to 1.5 time of what is required for each interview. Producing a final written report will consume approximately 40% of the hours used in this project. ISS estimates that 125 investigative hours will be required for this investigation. The actual hours may be more or less depending on the final scope of the investigation.

**Specialized Investigation**
If the investigation requires specialized investigative services such as computer forensics, polygraph, or other technical services, these services will presented to the Town Manager and agreed upon. Such specialized services will be billed at a rate agreed upon by and with prior approval of the Town Manager.

**Expenses**
ISS will bill for expenses associated with investigative tasks, travel, meals, and administrative costs such as copying at a reasonable and customary rate. Mileage will be reimbursed at the current IRS rate of 55 cents per mile.

*Pricing*

- Investigative Services at $125.00/hour for an estimated 125 hours for an estimated total of $15,625.00.
- Expenses will be reimbursed at the reasonable and customary rates.
- Specialized Investigative Services will be billed at an agreed upon rate, depending upon the required service.

- Costs for ISS services related to any future litigation or court proceedings or other actions will be determined at the time the services are required.

**Cost Control**

ISS will make every effort to minimize the hours required for this investigation. Interviews and on-site work will be scheduled to maximize the use of investigative hours and reduce travel time. ISS investigators will regularly inform the Town Manager of the progress of the investigation and the costs incurred. Costs in excess of the estimated 125 hours will be incurred only with prior approval of the Town Manager.

CONFIDENTIAL

# EXHIBIT E

# *Charlie Franklin's Notice of Termination from the Belmont City Manager*

City of Belmont

115 N. MAIN STREET
POST OFFICE BOX 431
BELMONT, N.C. 28012
PHONE (704) 825-5586
www.cityofbelmont.org

**MEMORANDUM**

To: Charlie Franklin, Chief of Police

From: Barry Webb, City Manager

Re: Notice of Termination

Date: April 17, 2015

I am providing this memorandum as a formal notice of your termination as Chief of Police for the City of Belmont. As cited in your suspension notice of April 10, 2015, this action is being taken due to violations of the following Personnel Policy regulations:

Article IX, Section 2 – Unsatisfactory Job Performance

1. Demonstrated inefficiency, negligence, or incompetence in the performance of duties.
2. Improper use of City property or equipment.
3. Discourteous treatment of other employees.
4. Absence without approved leave.
5. Habitual pattern of failure to report for duty at the assigned place.
6. Failure to meet work standards over a period of time.
7. Violation of administrative operating policies.
8. Failure to adhere to or comply with City policies and/or programs.

Specific actions leading to this finding include the following:

- Failure to maintain/update policies/procedures/general orders; failure to follow established policies and procedures.
- Failure to secure Internal Affairs (IA) records.
- Failure to follow IA process.
- Repeated violation of departmental policy and procedures for promotions.
- Failure to comply with departmental policy on internal discipline.
- Improper handling of demotions.
- Violation of City policy regarding employees' rights to access Human Resources as called for in the grievance procedure.
- Failure to address hostile work environment complaints.
- Failure to provide proper internal communication in violation of General Orders.

Exhibit
E

- Missing from duty excessive amounts of time without approved leave, resulting in administrative authority not being maintained.
- Excessive misuse of City email system for personal and personal business purposes.
- Misuse of City-owned property.
- Improper treatment of other employees, including treatment of a retaliatory nature.
- Improper use of POPAT test.

Article IX, Section 5 – Detrimental Personal Conduct

1. Falsification of records.
2. Willful misuse in the handling of City funds and property.
3. Willful acts that threaten City employees.
4. Serving a conflicting interest.
5. Harassment of an employee with threatening language.
6. Flagrant violation of work rules and regulations.
7. Conduct unbecoming a public officer or employee.
8. Failure to notify supervisor for failure to report for duty without approved leave.

Specific actions leading to this finding include the following:

- Missing from duty excessive amounts of time without approved leave, resulting in administrative authority not being maintained.
- Misuse of Drug Asset Forfeiture funds.
- Deletion of report pertaining to an officer's traffic accident and failure to provide information to the City's Safety Committee.
- Voiding citations in violation of General Orders.
- Misuse of City-owned property.
- Providing false statements to employees regarding actions being taken at the direction of the City Manager.
- Falsification of time records.

Under the terms of the Charter of the City of Belmont, you are entitled to request a formal removal proceeding with the City Council by submitting such request in writing. This written request must be submitted by 9:00 a.m. on Friday, April 24, 2015.

Cc: Debra Brown, Human Resources Officer

# EXHIBIT F

# *Plaintiffs' Public Records Request*

CIVITAS
INSTITUTE
CENTER FOR LAW AND FREEDOM

100 S. Harrington Street
Raleigh, NC 27603

*phone*: 919.834.2099
*fax*: 919.834.2350
*email*: clf@nccivitas.org
*web*: nccivitas.org

July 8, 2015

Mr. Barry Webb
City Manager
City of Belmont—City Hall
115 North Main Street
P.O. Box 431
Belmont, NC 28012
bwebb@cityofbelmont.org

Dear Mr. Webb:

I write on behalf of Mr. Dan Deitz and Mrs. Ellen Deitz Tucker, who have retained my services to help them access public records that are within your custody. Pursuant to G.S. §§ 132, I am requesting on their behalf copies of public records that contain information regarding the investigation of misconduct within the Belmont Police Department. Specifically, I am requesting on their behalf a complete copy of the investigative report prepared and completed by the U.S. Investigative Security Services Agency, LLC. Should you need further specificity to identify the document(s) to which I refer, please let me know.

My clients understand that the ISS report may contain confidential material. However, G.S. § 132-6(c) states, "No records request to . . . obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation . . . ." Furthermore, if you deny any part of this request, please cite the exemption(s) and/or reason(s) for denial.

I request that you provide this information in electronic format whenever possible. Please send any electronic records to me via e-mail at elliot.engstrom@nccivitas.org. Any physical records should be sent to: Attn: Elliot Engstrom, 100 S. Harrington Street, Raleigh, NC 27603.

Please apprise me of any copying fees or special service fees that will be assessed prior to taking any action that would require payment by my clients. I would further ask that if I am mistaken, and these records are in fact not in your custody but that of another public officials, that you please let me know.

Sincerely,

Elliot Engstrom

Elliot Engstrom
Attorney
Civitas Institute
Center for Law and Freedom

Exhibit F

# EXHIBIT G

## *Defendant's Public Records Denial*

CHARLOTTE OFFICE

2907 PROVIDENCE RD., SUITE 200 (28211)
POST OFFICE BOX 30787
CHARLOTTE, NORTH CAROLINA 28230
TELEPHONE (704) 332-8300
FAX (704) 332-9994

CRANFILL SUMNER & HARTZOG LLP

BRAD P. KLINE
ATTORNEY AT LAW
DIRECT DIAL #: (704) 940-3427
DIRECT FAX #: (704) 831-5503
EMAIL: BKLINE@CSHLAW.COM
WWW.CSHLAW.COM

July 15, 2015

***Via E-Mail: Elliot.Engstrom@nccivitas.org***
***and US Mail***
Elliott Engstrom
Civitas Institute
100 S. Harrington Street
Raleigh, NC 27603

Dear Mr. Engstrom:

Please allow this correspondence to serve as the City of Belmont's response to the public records request set forth in your letter dated July 8, 2015. In that correspondence, you requested a complete copy of the investigative report prepared and completed by the U.S. Investigative Security Services Agency, LLC.

Any documents responsive to this request are made confidential by N.C. Gen. Stat. § 160A-168, and as such, are not public records. The provisions of N.C. Gen. Stat. § 160A-168 therefore preclude the City of Belmont from producing the documents you requested.

If you have any questions, please do not hesitate to contact my office.

With best regards, I am

Sincerely,

Brad P. Kline

BPK/kjm

cc: Barry Webb (via e-mail: blw@cityofbelmont.org)

Exhibit G

# EXHIBIT H

# *Plaintiffs' Demand Letter*

CIVITAS
INSTITUTE
CENTER FOR LAW AND FREEDOM

100 S. Harrington Street
Raleigh, NC 27603

*phone*: 919.834.2099
*fax*: 919.834.2350
*email*: clf@nccivitas.org
*web*: nccivitas.org

August 3, 2015

Mr. Brad Kline
2907 Providence Rd., Suite 200
Post Office Box 30787
Charlotte, North Carolina 28230

Dear Mr. Kline,

Thank you for your letter dated July 15, 2015, addressing my clients' request for public letters pursuant to N.C. Gen. Stat. §§ 132. In your letter, you stated that any documents responsive to their request are made confidential by N.C. Gen. Stat. § 160A-168, and as such are not public records.

Respectfully, I must disagree with your opinion. For the reasons stated below, my clients are preparing to file suit against the City of Belmont pursuant to N.C. Gen. Stat. § 1-253 and N.C. Gen. Stat. § 132-6. We will wait to file suit for at least two weeks from the date of this letter to give you and city officials time to consider the situation.

While it is true that certain personnel files are not subject to disclosure under N.C. Gen. Stat. § 160A-168, that statute also puts limits on what qualify as personnel records. Specifically, it states:

> "For purposes of this section, an employee's personnel file consists of any information in any form **gathered by the city with respect to that employee.**"

Our position is that the U.S. I.S.S. report (the "Report") was neither "gathered by the city," nor is "with respect to" any particular employee. Rather, the report was a third-party investigation into the Belmont Police Department paid for by taxpayers.

While we understand that the report was conducted at the City's behest with taxpayer funds, this does not make the information within "gathered by the city." Further, we do not believe that the U.S. I.S.S. Agency (the "Agency") acted as the "agent" of the city. While in its "Preamble to Investigative Interviews", the agency stated that its investigators were to act "as agents of the City of Belmont," this statement is not controlling.

Exhibit
H

Finally, I would advise you that similar issues have been litigated twice before in North Carolina's courts. First, in *News and Observer Publishing Company, Inc. v. Poole*, 350 N.C. 465 (1992), the North Carolina Supreme Court held that under a similar statute, information gathered by a third party as part of an investigation is not a personnel record unless the information was first gathered by the employing state agency.

Second, in *Roch Smith, Jr. v. City of Greensboro*, 08-CVS-5569, the City of Greensboro had contracted with Risk Management Associates ("RMA") to conduct an investigation into the Greensboro Police Department. The plaintiffs sought disclosure of the report, in part based on the North Carolina Supreme Court's ruling in *Poole*. Ultimately, the trial court ruled that the executive summary of the RMA report was a public record. The report in dispute was leaked before the Court of Appeals could provide a ruling.

My clients are prepared to file suit in Gaston County Superior Court should the City not otherwise provide access to the Report. I look forward to discussing your thoughts, questions, and concerns as we move forward.

All the best,

Elliot Engstrom

Elliot Engstrom
Staff Attorney
Center for Law and Freedom
Civitas Institute

cc: Barry Webb

# EXHIBIT I

# Final Order in *Roch Smith v. City of Greensboro, 08 CVS 5569, Guilford Cty. Sup. Ct.*

NORTH CAROLINA
JUSTICE

IN THE GENERAL COURT OF

FILED
09 MAR -6 PM 3:06
GUILFORD COUNTY, C.S.C.

SUPERIOR COURT DIVISION
08 CVS 5569

ROCH SMITH JR; SAMUEL S. SPAGNOLA,

BY

Plaintiffs,

vs.

ORDER

CITY OF GREENSBORO,

Defendant.

---

THIS MATTER coming on for hearing before the undersigned Superior Court Judge in Plaintiffs' action seeking production of records from the Defendant, City of Greensboro, pursuant to North Carolina General Statutes § 132.

## FINDINGS OF FACT

1. The Plaintiffs initially made a written public records disclosure request dated October 31, 2007 to the Defendant, City of Greensboro, pursuant to North Carolina General Statutes § 132.

2. As a result of discussions between the Plaintiffs and agents and/or representatives of the Defendant, City of Greensboro, the Plaintiffs modified their request for public records in correspondence dated November 30, 2007.

3. The Plaintiffs' initial and amended request for public records encompassed a large volume of material and required the devotion of extensive time to identify and prepare and provide the copies of requested documents.

4. The parties settled all public records issues with the exception of the following two matters when this matter came on for hearing:

a. Whether or not the RMA Report is a public record that must be provided to the Plaintiffs pursuant to North Carolina General Statutes § 132.; and

b. Whether the closed session minutes provided to the Plaintiffs regarding the investigations or evaluations of the Greensboro Police Department under the administration of David Wray redacted information that should have been

Exhibit I

disclosed to the Plaintiffs as a public record pursuant to North Carolina General Statutes § 132.

5. North Carolina General Statutes §132-1 defines a public record as "all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions."

6. The Defendant, City of Greensboro, did not provide the Plaintiffs with the requested RMA Report because outside legal counsel advised that the RMA Report is a personnel record and pursuant to North Carolina General Statutes § 160A-168 is protected from disclosure to the public.

7. The RMA Report requested by the Plaintiffs was generated as a result of a joint investigation with Risk Management Associates (RMA) and the Defendant's in-house Legal Department. Defendant's employees Attorneys Blair Carr and ToNola Brown-Bland conducted employee interviews with representatives of RMA. The investigative report was sent to the Defendant by RMA. The RMA Report consists of information concerning the performance of several current and former employees of Defendant, and includes an Executive Summary, Introduction and Appendix items A. through Y.

8. The Plaintiffs requested information from closed sessions of the City Council.

9. The Defendant, City of Greensboro, did not provide the Plaintiffs with unredacted closed session minutes because North Carolina General Statutes § 143-318.10(e) provides that minutes of closed sessions "may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session."

10. The Defendant, City of Greensboro, met with the Plaintiffs in an effort to have a clear understanding of their public records request. Outside legal counsel and in-house legal counsel for the Defendant, City of Greensboro, wrote the Plaintiffs in an effort to explain why the City of Greensboro could not provide the RMA Report and portions of the requested closed session minutes.

11. The public records law does not require the Defendant, City of Greensboro, to provide the Plaintiffs with an explanation or legal justification for refusing to release requested documents. Nevertheless, the Defendant, City of Greensboro, did notify Plaintiffs that state statues prevented the release of the RMA Report and certain portions of closed session minutes.

12. When a city maintains records that combine records that are open to public access with records that are not, North Carolina General Statutes § 132-6 requires the government to permit access to the public portions, either by extracting the public parts from the whole or by excising the confidential parts.

13. The Court reviewed the RMA Report and the redacted closed session minutes in dispute.

14. The Defendant, City of Greensboro, acted with substantial justification in denying access to the RMA Report; and in releasing redacted portions of the requested closed session minutes.

15. Review of the documents submitted for review indicate a small portion of the RMA Report has portions that may be redacted and provided to the Plaintiffs; and a small portion of the redacted closed session minutes should be unredacted and provided to the Plaintiffs.

NOW, THEREFORE, THE COURT ORDERS, ADJUDGES AND DECREES AS FOLLOWS:

1. The Defendant, City of Greensboro, shall produce to the Plaintiffs the following documents from the RMA Report:

a. A redacted copy of the Executive Summary;
b. A redacted copy of the Introduction; and
c. Items from the Appendix identified as
    A. Initial newspaper article on the finding of the Hinson tracking device dated 6/10/2005
    B. "Secret Police" newspaper article dated 6/16/2005
    C. Chief David Wray's press statement dated 6/17/2005
    D. "Connect the Dots" newspaper article dated 6/19/2005
    E. CALEEA Assessment of Internal Affairs & Special Intelligence Section by Kleinknecht dated 7/27/2005
    F. GPD Organizational Chart
    G. GPD Directives
    H. GPD SOP's
    K. Newspaper article on surveillance at Beverly Hinson's residence
    L. Corporal Webb's report of Beverly Hinson's complaint and e-mail from Captain Lojko dated 6/17/2005
    M. Corporal Webb's unedited report of Beverly Hinson's complaint dated 6/24/2005
    N. Letter to Beverly Hinson advising her of findings dated 7/6/2005

2. The Defendant, City of Greensboro, shall provide another copy of the closed session minutes to the Plaintiffs, unredacting the portions as directed by this Court.

3. The Plaintiffs are not entitled to attorneys' fees in this matter as the Defendant, City of Greensboro, acted with substantial justification in denying access to the public records in question; and the Defendant, City of Greensboro, sought the advice of an attorney and such advice was followed.

4. The Defendant, City of Greensboro, will provide the Court with the documents ordered to be redacted for review and approval by the Court.

5. The Defendant, City of Greensboro, will serve the Plaintiffs with a copy of the documents ordered to be produced in this matter within 10 days after service of this Order on the Plaintiffs in this action.

This the 6th day of March, 2000.

The Honorable John O. Craig, III
Superior Court Judge Presiding